

# EXHIBIT A

COMPLAINT  
August 25, 2023

# EXHIBIT A



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CASE NO: A-23-876676-C  
 Department 8

Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER SMITH,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF  
 MOTOR VEHICLE OFFICE; JULIE  
 BUTLER, DIRECTOR OF THE NEVADA  
 DMV; and DOES 1 through 10,

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES AND  
 OTHER RELIEF BASED UPON:

1. RACE DISCRIMINATION IN  
 VIOLATION OF TITLE VII OF THE  
 CIVIL RIGHTS ACT AND NRS  
 613.330(1)(a)

2. AGE DISCRIMINATION IN VIOLATION  
 OF THE AGE DISCRIMINATION IN  
 EMPLOYMENT ACT AND NRS  
 613.330(1)(a)

JURY TRIAL DEMANDED

*EXEMPT FROM ARBITRATION- ACTION  
 SEEKING EQUITABLE OR  
 EXTRAORDINARY RELIEF*

Plaintiff CHRISTOPHER SMITH ("Plaintiff" or "Smith") alleges as follows:

1. This action is brought pursuant Title VII of the Civil Rights Act of 1964, 42 USC §2000e, et seq. (hereinafter "Title VII") and the Age Discrimination in Employment Act of 1967, as amended, 29 USC §621, et seq. (hereinafter "ADEA") and NRS 613.330(1)(a).

2. At all relevant times, the STATE OF NEVADA, DEPARTMENT OF MOTOR

1 VEHICLE OFFICE (“Defendant DMV” or “DMV”) employed twenty (20) or more employees for  
2 each working day during each of 20 or more calendar workweeks in the current or preceding  
3 calendar year, and are therefore subject to the provisions of Title VII and the ADEA.

4 **PARTIES**

5 3. Plaintiff, Smith, is a citizen of the United States and at all relevant times was a  
6 resident of the State of Nevada, County of Clark and City of Henderson.

7 4. Defendant DMV, is a public entity and a Department of the State of Nevada, who  
8 Plaintiff was employed by at all relevant times giving rise to the claims asserted herein.

9 5. Defendant JULIE BUTLER, DIRECTOR OF THE NEVADA DMV (“Defendant  
10 Butler” or “Director Butler”) is being sued in her official capacity as Director of the DMV.

11 6. On information and belief, Defendant Butler is a citizen of the United States and a  
12 resident of the State of Nevada.

13 7. Doe Defendants 1 through 10, are unknown at the present time and thus sued by  
14 Plaintiff in such fictitious names. Plaintiff alleges however that said Defendants are in some  
15 manner responsible for the damages sustained by Plaintiff and that said Defendants will be named  
16 with peculiarity once their identities are known. At such time, Plaintiff will seek leave of court to  
17 state more fully herein the names and acts of said Defendants.

18 8. Plaintiff is informed and believes and thereon alleges that at all relevant times  
19 giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Defendant  
20 DMV.

21 9. Defendant DMV is an employer within the meaning of *42 USC §2000e(b) and 29*  
22 *USC §§623 and 630(b)*.

23 **EXHAUSTION OF REMEDIES**

24 10. Plaintiff timely filed a “Charge of Discrimination” with the Equal Employment  
25 Opportunity Commission (hereinafter “EEOC”) and Nevada Equal Rights Commission  
26 (hereinafter “NERC”) against Defendant DMV, et al. and he has received a Notice of Right to Sue  
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1 from the EEOC on this charge dated June 1, 2023. A copy of this Notice is attached to the  
2 Complaint as Exhibit "A".

3 **GENERAL ALLEGATIONS**

4 11. Smith was hired by DMV as a Compliance Enforcement Investigator II at the  
5 Flamingo office on November 20, 2017. Smith was promoted to Senior Compliance Enforcement  
6 Investigator on June 14, 2021.

7 12. In March 2022 the Compliance Enforcement Division ("CED") posted a divisional  
8 promotional job announcement for Supervisory Compliance/Enforcement Investigator.

9 13. The position became opened by the retirement of CED Sergeant Brian Lacy in  
10 December of 2021. At the time of his retirement, Sergeant Lacy was the only African American  
11 supervisor within the CED of the DMV.

12 14. Smith applied for the position of Supervisory Compliance/Enforcement  
13 Investigator along with Michael Ferriolo ("Ferriolo"). Ferriolo, a Caucasian and substantially  
14 younger than Plaintiff, was at the time a CED Compliance Enforcement Investigator II.

15 15. After interviewing both Smith and Ferriolo, the all Caucasian panel consisting of  
16 CED Administrator Joseph Decker and CED Deputy Administrator Amy Levine (who  
17 interviewed the candidates in person from Las Vegas) and CED Sergeant Gordon Rodgers (who  
18 participated in the interviews remotely from Reno), unanimously selected Ferriolo for the  
19 Supervisory Compliance/Enforcement Investigator position.  
20

21 16. This was despite the fact that Smith had superior experience and qualifications to  
22 Ferriolo which is shown by among other things, the fact that he had been chosen over Ferriolo  
23 approximately ten month prior when they both sought a promotion to the Senior Compliance  
24 Enforcement Investigator position.

25 17. In addition Smith had more experience in the CED of the DMV than Ferriolo and  
26 was a decorated Law Enforcement Officer which included receiving an Officer of the Year  
27 award for major criminal investigations and various commendation including an FBI  
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1 commendation and a Police Medal of Valor, in addition to having a Bachelor's Degree in  
2 Criminal Justice Administration and a Master's Degree in Management.

3 18. Thus any supervisory experience that Smith lacked over Ferriolo was far  
4 outweighed by Plaintiff's other qualifications and experience.

5 19. Further Ferriolo's case work was not superior to Smith's as Plaintiff closed all the  
6 cases he was assigned and was recognized both orally and in writing by other DMV programs  
7 and law enforcement agencies for his case work and the handling of the cases assigned to him by  
8 the DMV Director.

9 20. Smith believes the only difference between the panel that chose Smith over  
10 Ferriolo for the Senior Compliance Enforcement Investigator in June of 2021 and the panel that  
11 chose Ferriolo over Smith for the Supervisory Compliance/Enforcement Investigator in April of  
12 2022, was that Sergeant Lacy, an African American, was on the panel instead of Sergeant  
13 Rodgers.

14 21. Finally on April 13, 2022 when Smith was asked why he was not chosen for the  
15 position despite being more qualified than Ferriolo, he was told the CED was going in a different  
16 direction and that is why they chose Ferriolo.

17 22. Plaintiff took that to mean that the CED was moving away from having a diverse  
18 leadership team supervising the CED.

19  
20 **FIRST CAUSE OF ACTION**

21 **(For Race Discrimination in Violation of Title VII and NRS 613.330(1)(a))**

22 **(Against Defendants DMV and Director Butler)**

23 23. Plaintiff Smith incorporates the allegation set forth in paragraphs 1 through 22,  
24 inclusive, as if fully set forth herein.

25 24. This cause of action is brought pursuant to Title VII and NRS 613.330(1)(a) to  
26 obtain relief for Plaintiff for failing to promote him, or otherwise discriminating against him in the  
27 terms, conditions or privileges of his employment because of his race (African American) in  
28

1 violation of Title VII and NRS 613.330(1)(a).

2       25. As set forth herein above, Ferriolo, a Caucasian, was promoted in April 2022 to  
3 Supervisory Compliance/Enforcement Investigator over Smith even though Plaintiff had superior  
4 experience and qualifications to Ferriolo and in fact was promoted to Senior Compliance  
5 Enforcement Investigator over Ferriolo approximately ten month earlier in June of 2021, thus  
6 supporting an inference of race discrimination on behalf of Defendants.

7       26. As a direct, foreseeable, and legal result of this discrimination because of his race,  
8 Plaintiff has suffered, overall economic losses in earnings, bonuses, job benefits and expenses, in  
9 an amount to be proven at trial which exceeds the minimum jurisdictional limits of this Court.

10       27. As a further direct, foreseeable, and legal result of this discrimination because of  
11 his race, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress,  
12 nervousness, tension, anxiety, recurring nightmares, depression, inconvenience and loss of  
13 enjoyment of life and other pecuniary losses, the extent of which is not fully known at this time,  
14 for which he seeks damages in an amount in excess of the minimum jurisdictional limits of the  
15 Court, also to be proven at the time of trial.

16       28. In acting as they did, Defendants knowingly, willfully, and intentionally acted in  
17 conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to  
18 oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in  
19 a sum according to proof at trial.

20       29. Further Smith is entitled to injunctive relief in the form of promoting Plaintiff to  
21 the position of Supervisory Compliance Enforcement Investigator, a position he was not promoted  
22 to because of his race.

23       30. Plaintiff claims the damages alleged herein, together with prejudgment interest as  
24 provided by law, in a sum according to proof at trial.

25       31. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of  
26 his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to  
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1 proof at trial.

2 **SECOND CAUSE OF ACTION**

3 **(For Age Discrimination and in Age Discrimination**

4 **In Employment Act of 1967 and NRS 613.330(1)(a))**

5 **(Against Defendants DMV and Director Butler)**

6 32. Plaintiff Smith incorporates the allegation set forth in paragraphs 1 through 31,  
7 inclusive, as if fully set forth herein.

8 33. This cause of action is brought pursuant to ADEA to obtain relief for Plaintiff for  
9 failing to promote him, or otherwise discriminating against him in the terms, conditions or privileges  
10 of his employment because of his age in violation of the ADEA and NRS 613.330(1)(a).

11 34. At the time Ferriolo was promoted to Supervisory Compliance/Enforcement  
12 Investigator in April 2022 Smith was 56 years of age and substantially older than Ferriolo.

13 35. Further as set forth above, Plaintiff had superior experience and qualifications to  
14 Ferriolo and in fact was promoted to Senior Compliance Enforcement Investigator over Ferriolo  
15 approximately ten month earlier in June of 2021, thus supporting an inference of age  
16 discrimination on behalf of Defendants.

17 36. As a direct, foreseeable, and legal result of Defendants' age discrimination,  
18 Plaintiff has suffered, overall economic losses in earnings, pension, bonuses, job benefits and  
19 expenses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of  
20 this Court.

21 37. The age discrimination by Defendants was willful and thus Plaintiff should be  
22 awarded liquidated damages pursuant 29 USC §626(b).

23 38. Further Smith is entitled to injunctive relief in the form of promoting Plaintiff to  
24 the position of Supervisory Compliance Enforcement Investigator, a position he was not promoted  
25 to because of his age.

26 39. Plaintiff claims the damages alleged herein, together with prejudgment interest as  
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1 provided by law, in a sum according to proof at trial.

2 40. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of  
3 his claim and Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according  
4 to proof at trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Smith demands judgment against Defendants DMV and Butler as  
7 follows:

- 8 1. Declaring that the acts and practices complained of here are a violation of  
9 Title VII, ADEA and NRS 613.330(1)(a);
- 10 2. Enjoining and permanently restraining the violations by Defendants of Title VII,  
11 ADEA and NRS 613.330(1)(a);
- 12 3. For back pay and front pay for overall economic losses in earnings, bonuses, job  
13 benefits and expenses, according to proof at time of trial;
- 14 4. For compensatory damages for mental and emotional distress, worry, indignity,  
15 mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life  
16 and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;
- 17 5. For punitive damages;
- 18 6. For liquidated damages pursuant 29 USC §626(b);
- 19 7. For equitable relief in the form of promoting Plaintiff to the position of Supervisory  
20 Compliance Enforcement Investigator, a position he was not promoted because of his race and/or  
21 age.
- 22 8. For attorney's fees and costs in an amount determined by the court to be reasonable;
- 23 9. For pre-judgment interest on all damages; and
- 24 10. For any other and further relief that the court considers proper.

25 **DEMAND FOR JURY TRIAL**

26 Pursuant to Rule 38(b) of the Nevada Rules of Civil Procedure, Plaintiff demands a trial  
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1 by jury in this action.

2 DATED: 8/25/2023

LAW OFFICES OF MICHAEL P. BALABAN

3  
4 BY: /s/ Michael P. Balaban

5 Michael P. Balaban  
6 LAW OFFICES OF MICHAEL P. BALABAN  
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# EXHIBIT

“A”

## NOTICE OF RIGHT TO SUE



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Las Vegas Local Office  
333 Las Vegas Blvd South, Suite 5560  
Las Vegas, NV 89101  
(702) 553-4470  
Website: [www.eeoc.gov](http://www.eeoc.gov)

### **DETERMINATION AND NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 06/01/2023

**To:** Mr. Christopher Smith  
2812 Via Florentine St  
Henderson, NV 89074

Charge No: 487-2022-01197

EEOC Representative and email: SAUL VAZQUEZ  
Investigator  
[Saul.Vazquez@eeoc.gov](mailto:Saul.Vazquez@eeoc.gov)

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### **DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

### **NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 487-2022-01197.

On behalf of the Commission,

Digitally Signed By: Christine Park-Gonzalez  
06/01/2023

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Christine Park-Gonzalez  
District Director